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Chapter 13

**War Resisters in the US and Britain - Supporting the Case for a Right to
Selective Conscientious Objection?**

Andrea Ellner

Introduction

This chapter examines how far evidence provided by current members of the US and British armed forces or veterans of the wars in Iraq and Afghanistan who became war resisters refutes arguments against the introduction of a right to selective conscientious objection for members of All Volunteer Forces. Although many, including some resisters, assume that having volunteered means one cannot conscientiously object to war, a right to universal conscientious objection exists in the US and Britain. Yet, this is not an option for those who developed conscientious objections to the prosecution (*jus in bello*) and their government's strategic rationale and justification (*jus ad bellum*) of a specific war. The chapter starts with a brief examination of why this is the case and shows that many resisters chose illegitimate ways to separate from the military.

Without suggesting that conscientious objection is the prime motivator for going Absent Without Leave (AWOL) or deserting, it argues that steep rises in such incidents after 2003, particularly in Britain, combined with the revival of resistance groups, especially in the US, indicate that there have been problems to which a right to selective conscientious objection may be a partial solution. The evidence examined after a brief survey of arguments against a right to selective conscientious objection stems from resisters of whom many, though not all, had gone AWOL or deserted at some point. They have publicly explained their ethical objections to the wars,

especially in Iraq, and are thus self-selecting as would-be candidates for selective conscientious objection status.

The analysis examines this evidence through engagement with arguments forwarded by other contributors to this volume against introducing a right to selective conscientious objection; further linkages to their contributions are also highlighted in the conclusions to this volume. This chapter focuses particularly on Skerker's conception of individual moral agency in and corporate responsibility of the military. In conjunction with this, it suggests widening the context for the debate on a right to selective conscientious objection. Skerker, Fisher, and Bergeron argue that, because enlisted personnel have volunteered they have knowingly entered into a contract which obliges all members of the armed forces to execute the orders given by the legitimate authority, that is, the democratically elected government. They reject a right to selective conscientious objection as long as the order to go to war is legal or operations are conducted within the Law of Armed Conflict. This chapter argues that we should question the assumption that volunteering equates to making a free choice to join based on recruits understanding and accepting that in service they may be expected to engage in operations that contravene their ethical principles and against which they have no right to object unless orders are manifestly illegal.

Here, and with regard to the concept of corporate responsibility, the context of counter-insurgency operations is particularly relevant. As will be shown, corporate responsibility does not necessarily facilitate service members absolving themselves from personal guilt resulting from ethical conflicts they experienced in war. Individual service members have different ways of dealing with the psychological consequences. Publicly outspoken resisters have, to some degree, externalised their conflicts and transformed their regrets or guilt into public opposition to the wars or

assistance to veterans or other resisters still in service. There are, however, also other responses. In 2009 Litz et al., health professionals working with the US military, identified the phenomenon of moral injury. All wars, they observed, confront service members with ethically problematic choices, but ‘counterinsurgency, guerrilla warfare, especially in urban contexts poses greater risks’ than other wars that military personnel encounter ethically ambiguous situations as ‘these types of wars involve unconventional features [...] that produce greater uncertainty, greater danger for noncombat troops, and generally greater risk of harm among non-combatants’.¹

The evidence presented throughout will show that many experiences which presented resisters with ethical conflicts or caused them to object and absent themselves were closely linked to this operational context. It will also show that military leadership played an important role in setting parameters, such as the Rules of Engagement, which enhanced or even created such pressures. The final section of this chapter then explores, in place of summative conclusions, to what degree leadership and changes in military culture might help reduce moral or ethical conflicts for individual service personnel and what role a right to selective conscientious objection might play in facilitating such change.

The ‘All or Nothing’ Problem of Conscientious Objection

Britain and the US acknowledge in law that volunteers may develop conscientious objections to war during military service. In the US eligibility criteria have been broadened since the Vietnam era. Applicants may hold traditional religious belief in a supreme being or an overarching set of ethical or moral beliefs, but cannot object on political, sociological or purely personal ethical grounds. They have to be sincere and

¹ B.T Litz et al., ‘Moral Injury and Moral Repair in War Veterans: A Preliminary Model and Intervention Strategy’, *Clinical Psychology Review*, Vol. 29 (2009), p.696.

object to all war.² The Non Governmental Organisation *Conscience and Peace Tax International* has described Britain's record on universal conscientious objection as 'on the surface (...) exemplary'.³ Deakin's account in this volume of the British approach to selective conscientious objection shows that such cases have traditionally been, and are still, handled pragmatically. This approach minimises publicity, political embarrassment and the potential for resistance to spread amongst service members. It is indeed difficult to establish an accurate picture of the number of applications and success rates in contemporary Britain and the US.

The official US figure of 425 applications, with 224 approved, between 2002 and 2006, is widely regarded as unreliable and 'extremely low'.⁴ The British Ministry of Defence (MoD) keeps no statistics on applications and only released figures of approved applications following requests under the Freedom of Information Act. According to this information, the largest number approved in one year was six.⁵ In both countries those advising or providing legal representation for service personnel estimate that the true number of individuals who sought to leave service during the

² Daniel H. Shubin, *The Conscientious Objector and the United States Armed Forces* (Bakersfield, CA: Peace Church Challenge, 2008), pp.12f.

³ Conscience and Peace Tax International (CPTI), *Conscientious Objection to Military Service: Issues for the Country Report Task Forces United Kingdom of Great Britain and Northern Ireland*, Submission to the 91st Session of the Human Rights Committee, October 2007, p.1 <http://wri-irg.org/system/files/CPTI-HRC91-UK-en.pdf>. All electronic sources cited in this chapter were accessed 31 January 2013.

⁴ Marjorie Cohn & Kathleen Gilberd, *Rules of Disengagement - The Politics and Honor of Military Dissent* (Sausalito: PoliPointPress, 2009), p.36. U.S. Government Accountability Office, *Military Personnel: Number of Formally Reported Applications for Conscientious Objectors Is Small Relative to the Total Size of the Armed Forces*, Report to Congressional Committees, GAO-07-1196 (Washington, D.C.: GAO, September 2007) <http://www.gao.gov/assets/270/267693.pdf>

⁵ War Resisters' International (WRI), *Country Reports and Updates: United Kingdom*, 2 October 2008 http://www.wri-irg.org/programmes/world_survey/country_report/en/United%20Kingdom

Iraq War on grounds of conscience was significantly higher but several factors obscured the picture.

According to Bill Galvin of the US Center on Conscience and War, universal conscientious objection applications dealt with at a local level are not recorded and many conscientious objectors 'find some other way to get out. They never apply for conscientious objector status because it's not the easiest way. Some of them go AWOL, some can prove medical reasons or some may challenge their enlistment agreements.'⁶ British military lawyer Gilbert Blades also stated that 'the numbers leaving because of Iraq [were] often obscured as they were not counted as conscientious objectors'.⁷

Applications for universal conscientious objection status are also passively or actively discouraged; the latter depends largely on the attitude of commanding officers involved in the process. In both countries there is a lack of both transparency about the existence of this right and access to information on application procedures.⁸ In Britain regulations were not even available to the counselling organisation *At Ease* until a few years ago.⁹ The MoD only released the slightly different procedures of the

⁶ Jane O'Brien, 'The Soldiers Who Can No Longer Fight', *BBC News*, 4 March 2009

<http://news.bbc.co.uk/1/hi/world/americas/7900059.stm>

⁷ WRI, *Country Reports and Updates: United Kingdom*, 2 October 2008 http://www.wri-irg.org/programmes/world_survey/country_report/en/United%20Kingdom

⁸ WRI, *United Kingdom of Great Britain and Northern Ireland: Human Rights and the Armed Forces*, Submission to the 91st Session of the Human Rights Committee: October 2007, September 2007, p.1. http://www2.ohchr.org/english/bodies/hrc/docs/ngos/WarResistersInternational_UK93.pdf

⁹ WRI, *Country Reports and Update*, 2 October 2008.

three services in 2007 in response to a Freedom of Information Request by War Resisters International.¹⁰

Some US universal conscientious objection claimants encountered serious hostility in their environment. Aidan Delgado received universal conscientious objection status 18 months after applying. During that time he faced verbal and physical aggression in his unit. His commander suspected him of seeking to shirk deployment to Iraq. In Delgado's view this was due to 'the implicit judgement on them. It was as if I was saying 'I'm too moral to do what you do' or that I was looking down on them because they were a bad person'.¹¹

Former Specialist Augustin Augayo joined the Army in 2003 and found it difficult in training to handle or use weapons. He applied for universal conscientious objection status after deployment to Iraq as a medic. With a decision on his application pending he was redeployed, but refused to load his weapon. Instead of assigning him non-combatant tasks as the regulations recommend, he was put on guard duty. He was decorated for his service but, when his application was repeatedly rejected and he came under pressure from his command, went AWOL, then deserted, was tried, sentenced, discharged with bad conduct and never acknowledged as a conscientious objector.¹²

In Britain, the impact of Commanding Officers' attitudes becomes particularly obvious in the case of Ben Griffin, former SAS soldier, who did not file for universal conscientious objector status but refused to return to Iraq on ethical and political grounds. He was released in 2005 'with a glowing testimonial from his Commanding

¹⁰ WRI, *Conscientious Objection and the British Armed Forces - Index of Papers Released under the Freedom of Information Act*, August 2007 <http://wri-irg.org/news/2007/modindex-en.htm>

¹¹ Jane O'Brien, 'The Soldiers Who Can No Longer Fight'.

¹² Cohn, Gilberd, *Rules of Disengagement*, p.32f.

Officer', describing him as a 'balanced and honest soldier who possesses the strength and character to genuinely have the courage of his convictions'.¹³ He explained his refusal to go back with doubts about the legality of the war and serious ethical and legal objections to US tactics in Iraq to his commanding officer when on leave in the UK.

A military environment that is often hostile to universal conscientious objection as well as multiple conflicts of loyalty and duty, which Ficarotta and Zupan discuss in this volume, are, however, not the only problems. Universal conscientious objector status confronts dissenters who object to a specific war with an all or nothing choice. Many US resisters, who eventually discovered the options of applying for such a status, considered themselves ineligible not only because they had volunteered, but also because they did not object to war in all circumstances. Whilst the first concern is wrong, the second extends the moral dilemma for potential applicants into the future. They may consider objecting to specific operations as a duty they owe to their conscience, peers and family and be prepared to tolerate opprobrium, but since universal conscientious objector status prevents them from re-entering service they cannot follow their conscience when going to war would be compatible with their ethics.

Andre Shepherd, a US Army helicopter mechanic, had joined in 2004 in order to improve his life. He became a dissenter during deployment in Iraq. After returning to his base in Germany and further research on the justifications for and the legal status of the war, he decided not to go back. When he was scheduled to redeploy he discussed his objections with a Non-Commissioned Officer who mentioned universal

¹³ Sean Rayment, 'I Didn't Join the British Army to Conduct American Foreign Policy', *The Daily Telegraph*, 12 March 2006 <http://www.telegraph.co.uk/news/uknews/1512767/I-didnt-join-the-British-Army-to-conduct-American-foreign-policy.html>

conscientious objection. For Shepherd this was not an option, because 'if they're overrunning America's shores, of course [he was] going to pick up a weapon and help to defend it'.¹⁴ He saw his choices as: 'either go to Iraq anyway or walk away from the service, because there is no other option. It's either conscientious objection ... status or AWOL or just do what you're told'.¹⁵ He sought asylum in Germany in 2008.

Shepherd's path to dissent is not unique; other cases will be discussed below. Neither are his reasons for not claiming universal conscientious objection status. On reflection he found the value system with which he had grown up irreconcilable with the tasks he was ordered to perform in Iraq, but defending the US at home was compatible with his conscience. It is difficult not to see him as a selective conscientious objector, but since he could not file for this he went AWOL.

Resistance beyond 'All or Nothing'

Going AWOL, deserting or more generally resisting orders are not new phenomena. They are to some degree part of military culture and not always motivated by conflicts of conscience.¹⁶ However, US and British service members who became active war resisters on political or ethical grounds first chose this path of separating from the military, including, in the case of US military personnel, seeking refuge in Canada.¹⁷ Le Bouthillier in this volume examines how the Canadian courts have responded to US service personnel applying for refugee status.

¹⁴ Buff Whitman-Bradley et al (eds), *About Face - Military Resisters Turn against War* (Oakland, CA: PM Press, 2011), p.37.

¹⁵ Ibid.

¹⁶ Craig Leslie Mantle (ed.), *The Unwilling and the Reluctant* (Kingston, Ontario: Canadian Defence Academy Press, 2006).

¹⁷ Judy Keen, 'In Canada once more, U.S. troops fleeing a war', *USA Today*, 28 May 2010

http://www.usatoday.com/news/world/2010-05-23-war-resisters_N.htm

The numbers of resisters or failures to follow orders to train, deploy, re-deploy or join their unit after home leave increased for years after the start of the Iraq War. By 2006 British AWOL numbers had trebled with a sharp rise in 2004 and 2005.¹⁸ 17,470 military personnel went AWOL between 2003 and early 2010.¹⁹ According to official US Army figures AWOL offenses increased by 4.2 percent between 2006 and 2011, peaking in 2008, the number of offenders peaked in 2007 and decreased by 11.8 percent until 2011; desertion offenses and deserters decreased in the same period by 24.4 percent and 31 percent respectively.²⁰ The decreases may be a result of enhanced prosecutions, which tripled between 2002 and 2006 compared with the 1997-2001 period.²¹ The US Marines had also allegedly enhanced efforts to capture Vietnam era deserters in an attempt to prevent new desertions.²²

Simultaneously, in the US, where a resistance 'infrastructure' and culture survived from the Vietnam era, recent veterans and serving personnel revived or set up associations to assist other recent veterans and war resisters still in active service and to publicly oppose especially the Iraq war. It is important to note that, although

¹⁸ Severin Carrell, 'Soldiers going AWOL have Trebled since the Invasion of Iraq', *The Independent*, 19 March 2006 <http://www.independent.co.uk/news/world/middle-east/soldiers-going-awol-have-trebled-since-the-invasion-of-iraq-470486.html>

¹⁹ Michael Savage, 'More than 17,000 Episodes of Troops Going Awol since 2003', *The Independent*, 20 February 2010 <http://www.independent.co.uk/news/uk/home-news/more-than-17000-episodes-of-troops-going-awol-since-2003-1905145.html>

²⁰ Headquarters, Department of the Army, *Army 2020 - Generating Health & Discipline on the Force Ahead of Strategic Reset* (Report 2012), p.130f. http://www.army.mil/article/72903/Army_2020_Generating_Health_Discipline_in_the_Force_Report_2012/

²¹ Paul von Zielbauer, 'U.S. Army Prosecutions of Desertions Rise Sharply', *The New York Times*, 8 April 2007 http://www.nytimes.com/2007/04/08/world/americas/08iht-awol.4.5191411.html?_r=1

²² Bill Nichols, 'Decades later, Marines hunt Vietnam-era deserters', *USA Today*, 7 March 2006 http://www.usatoday.com/news/washington/2006-03-07-deserter-side_x.htm

they are frequently not aware of it, US service personnel have considerable freedoms to participate in public debate as long as they only represent themselves and refrain from engaging in electoral politics.²³ The modern US resistance movement is small compared to its predecessors, but the links are unsurprising. The wars in Afghanistan and Iraq also were or became politically, legally and ethically controversial. Modern resisters also share many experiences with their predecessors of the Vietnam era.²⁴

Iraq Veterans against the War (IVAW) was founded in 2004 at a convention of *Veterans for Peace* (VfP), established in 1985 and active in supporting resisters and veterans.²⁵ IVAW expanded its scope to the Afghanistan war a few years later. It followed consciously in the footsteps of *Vietnam Veterans against the War*, as did its *Winter Soldier 2008* meeting, where resisters spoke about the conduct of operations and their objections to the wars.²⁶ IVAW members must be or have been serving in the military. It has chapters in all US states, including on military bases, and abroad and calls for immediate withdrawal of troops, reparation for the Iraqi and Afghan people and adequate health provisions, including trauma care, for active duty soldiers and veterans. Its membership is 'over 1,700'.²⁷ Compared to the size of the US military, this figure is very small and supports Ficarotta's and Zupan's point that only few make and carry through the choice of openly objecting to participating in an unjust war or a war that is carried out by unjust means.

²³ Cohn, Gilberd, *Rules of Disengagement*, pp.77-83.

²⁴ David Cortright, *Soldiers in Revolt - GI Resistance during the Vietnam War* (Chicago, IL: Haymarket Books, 1975).

²⁵ Kelley Dougherty, Opening Speech - Legacy of GI Resistance, *Winter Soldier Conference*, 13-16 March 2008, National Labor College, Silver Spring, MD, 2008 <http://www.ivaw.org/blog/legacy-gi-resistance/kelly-dougherty>

²⁶ Iraq Veterans against the War, *About*, undated <http://www.ivaw.org/about>

²⁷ Brooklyn, 'Exhibition: War is Trauma Exhibition: Justseeds & IVAW', 3 December - 8 January, 2012

<http://www.booklyn.org/exhibition/000577.php> Current figures are difficult to establish.

In Britain similar resisters' groups are rare. *At Ease*, founded in 1973, is not a resistance organisation, but speaks out on behalf of service personnel and provides advice on legal and disciplinary matters, family issues and for those seeking early release.²⁸ The British counterpart of VfP was only officially launched in April 2012.²⁹ Since leaving the SAS Griffin has been promoting a critical public discourse on the British military and Iraq and Afghanistan wars, although a high-court order prevents him from disclosing further details about torture of Iraqi and Afghan prisoners;³⁰ he also works with the virtual network *Forces Watch*.³¹

Former Lance Corporal Joe Glenton also became an active British resister. He went AWOL for two years in 2007, when he was due for re-deployment to Afghanistan, because he considered the war illegal, and was jailed in 2010.³² In 2009 he had turned himself in and joined the *Stop the War* coalition. He lobbied for the withdrawal of British troops from Afghanistan, as they had 'become a tool of American foreign policy', reminding the government that it was 'obliged to ensure that the cause is just and right' and stating he 'felt ashamed' because he did not think Afghanistan had benefited from Britain's military presence.³³

The evidence so far suggests, and more will be provided below, that US and British service personnel who have publicly questioned the legality and conduct of

²⁸ *At Ease, About Us*, undated <http://www.atease.org.uk/about.htm>

²⁹ Veterans for Peace UK, *About Us*, <http://veteransforpeace.org.uk/>

³⁰ Richard Norton-Taylor, 'Court Gags Ex-SAS Man Who Made Torture Claims', *The Guardian*, 29 February 2008 <http://www.guardian.co.uk/uk/2008/feb/29/military.law>

³¹ Forces Watch <http://www.forceswatch.net/>

³² 'Awol Soldier Joe Glenton Speaks of Jail Support', *BBC News*, 26 July 2010 <http://www.bbc.co.uk/news/uk-england-york-north-yorkshire-10760579>

³³ Steven Morris, 'Alleged British Army Deserter Appears at Court Martial', *The Guardian*, 3 August 2009 <http://www.guardian.co.uk/uk/2009/aug/03/british-army-alleged-deserter-court>

operations in Afghanistan and Iraq have often based their objections on moral and ethical grounds. Few, however, saw universal conscientious objection as an option. Selective conscientious objection might have provided some with a legitimate route to separation from the military, allowing them to act in accordance with their conscience now and in future. What then are the principal objections to a right to selective conscientious objection?

The State of the Debate on Selective Conscientious Objection

Some scholars, including several contributors to this volume, object to a right to selective conscientious objection because they see it as: (1) *impractical*, as it would be exceedingly difficult to establish fair and timely procedures for claimants to be dealt with appropriately;³⁴ (2) *unnecessary*, because the principles of moral equivalence of combatants³⁵ and corporate responsibility relieve individual service members of the need to justify their participation in a potentially unjust war although not of their duty to act in accordance with the laws of war on operations; (3) organisationally and politically *untenable* as the government, military authorities and commanders must be able to rely on subordinates following (legal) orders if the military is to function as the principal organisation of the state capable of the professional application of force in defence of national security, in other words they cannot pick and choose which orders to follow.³⁶ In this volume Bergeron and Fisher share the latter objection, arguing that a right to selective conscientious objection would undermine the constitutional construct of the social contract and the subordination of the armed

³⁴ See Skerker and Bergeron in this volume.

³⁵ For a debate on these and related issues see David Rodin and Henry Shue (eds), *Just and Unjust Warriors - The Moral and Legal Status of Soldiers* (Oxford: Oxford University Press, 2010).

³⁶ For a refutation of various arguments in favour of a right or duty of all military personnel to SCO see George R Lucas, 'Advice and Dissent: The Uniform Perspective', *Journal of Military Ethics*, 8/2 (2009), pp.141-161.

forces to the civilian legitimate authority, a fundamental principle of civil-military relations in liberal democracies.

In essence, arguments against a right to selective conscientious objection seek to maintain severe limitations on the human and moral agency of service personnel. Lucas argued in rather drastic terms that this is necessary, citing fragging, the killing of officers and senior enlisted men by their subordinates in the Vietnam War, as an extreme version of dissent, to which the lower ranks can have neither a duty nor a right and which would undermine the military as a functioning organisation. For him this demonstrated that '*autonomy is not the goal, it is the problem*'.³⁷ It is rather problematic to base an argument against granting service members a higher degree of moral agency on the comparatively small risk of such radical action. It also ignores the possibility that enabling service members to voice their dissent more constructively or release them from service in a specific war may reduce that risk.

Associated with these arguments is often the contention that it is hubris for individual service members to deem their individual conscience superior to the decisions of the legitimate authority, that is, in liberal democracies the elected government's authority over the armed forces and within the military the authority of superior officers over their subordinates. In the US Aidan Delgado had this experience. In Britain, most of the above arguments, including the accusation of 'amazing arrogance', were deployed by the Judge Advocate in the Court Martial of Flight Lieutenant Malcolm Kendall-Smith, RAF, in 2006, although he accepted he had acted on moral grounds.³⁸ Kendall-Smith, a Medical Officer, had refused orders

³⁷ Lucas, *Advice and Dissent*, p.154.

³⁸ Hyder Gulam & Mike O'Connor, 'Selective Conscientious Objection: The Court Martial of Flight Lieutenant Malcolm Kendall-Smith, RAF', *ADF Health*, 7 (Oct 2006), p.69.

http://www.defence.gov.au/health/infocentre/journals/ADFHI/oct06/ADFHealth_7_2_68.pdf

to deploy to Iraq in 2005 contesting its legality and was sentenced to eight months in prison, fined and dismissed from service; Deakin examines this and other British cases in more detail in this volume.

The case for a right to selective conscientious objection on philosophical grounds is usually linked to the demand that all service personnel have an obligation to refuse to participate in unjust wars; the conclusions to this volume examine the contributions of Imiola and Goffi on this point.³⁹ Others, like Skerker, concede that there may be a case in principle for selective conscientious objection, but conclude with those who object to its introduction that it is impractical, unnecessary or untenable; the moral equality of combatants must prevail. Skerker's argument rests on three core pillars:

(1) the epistemic limitations of subordinates in the armed forces which in his view do not allow military personnel, apart from the senior leadership, to make choices based on individual ethics, (2) that the military as an organisation takes on corporate responsibility which relieves individuals from being morally or ethically culpable as long as they execute legal orders, and that (3) individuals are duty bound to execute legal orders due to the constitutional, legal and organisational relationship between the military and the state and, within the military, between individuals and the constitution and the military as an organisation respectively. Essentially he suggests that the military as an organisation overrides individual ethical norms on whose basis civilians have the freedom and duty to act and simultaneously absolves individual service members from applying such civilian ethical standards when

³⁹ For example Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009); Jessica Wolfendale, 'Professional Integrity and Disobedience in the Military', *Journal of Military Ethics*, 8/2 (2009), pp.127-140.

executing legal orders during military service; the only basis for individual dissent is the illegality of orders.

Effectively this means service members' moral agency must be severely constrained because it is a necessary prerequisite for organisational effectiveness and because they have limited knowledge and insight. However, due to the principle of corporate responsibility they need not feel guilty for following orders they would consider ethically objectionable as civilians but which senior leaders deem operationally necessary and legal. The following sections will demonstrate through resisters' accounts, that some of the core assumptions underlying this argument are sometimes untenable. It critically assesses especially the linkage between knowledge and individual agency, how far recruits are enabled to accept the curtailment of their moral agency knowingly and by choice and the relevance of corporate responsibility for individual conscience.

Knowledge and Individual Agency

How much knowledge is enough for an individual to make an ethical choice? Perfect knowledge is never possible. Senior military and civilian officials make decisions on the basis of imperfect knowledge. As the invasion of Iraq in 2003 has demonstrated, such knowledge may be used in a manner that results in an ethically and legally contested decision. One should also not overlook, although this cannot be discussed further here, that the concepts of bounded rationality and cognitive dissonance identify limits of rationality and selectivity of information processing when actors make and uphold decisions.⁴⁰

⁴⁰ Leon Festinger, *A Theory of Cognitive Dissonance* (Stanford, CA: Stanford University Press, 1957); Barbara J. Nelson, 'Public Policy and Administration: An Overview', in Robert E. Goodin & Hans-Dieter Klingemann (eds), *A New Handbook of Political Science* (Oxford: Oxford University Press, 1996), p.563.

Such constraints on rationality apply to any context for individual decisions, from the citizen or lowest rank in the military up to the highest levels of civilian or military public office where structural and organisational factors add further disincentives against revising decisions even when new information would objectively make this advisable. The military context reinforces these dynamics. Its strict hierarchical organisation and culture based on discipline and codes of conduct which reward efficient and effective execution of orders discourage subordinates from questioning their rationale, although they are not powerless as discussed below.

In combat it is particularly difficult for individuals to access and process information, if they were to question the legality of orders. And yet, they have a duty to do so under the International Law of Armed Conflict. In cases bar the most flagrant breaches of the law, those who refuse to carry out orders they deem illegal have to defend their stance with imperfect knowledge of the finer details of the law, the operational and strategic rationale of an order and the justifications defence and civilian lawyers will have prepared at the higher level of decision-making. Hence, the duty to resist illegal orders very likely has to be discharged on the basis of limited knowledge.

For this reason and because there is no indication how much knowledge is enough, it is not clear why individuals should not also have a right to object to technically legal but ethically questionable orders or seek to prevent the execution of orders that may have this effect. The requirement of superior knowledge for granting the right to dissent becomes even more problematic if it accords moral agency only to senior decision-makers not least because they define the Rules of Engagement.

During Winter Soldier 2008 many speakers were particularly disturbed by the gradual relaxation or break-down of the Rules of Engagement and the de-humanising

effect on soldiers of the operational environment and tactics.⁴¹ Several veterans spoke about orders to strike buildings or fire at persons, vehicles or areas indiscriminately, which often led to the loss of civilian lives without operational gains apparent to the service members. This confronted soldiers with moral dilemmas and increased moral pressures in an already high-pressure operational context.

Jason Hurd, honourably discharged after ten years in the US Army and National Guard, chose not to act in accordance with the Rules of Engagement and thus narrowly avoided triggering a major incident. He should have prepared to fire at a car which continued to approach a check-point despite his repeated warnings. In the last minute a local man appeared and stopped the car. The driver, an elderly lady, was a greatly respected member of the local community. Hurd considered it highly likely that a major riot would have ensued had he killed her.⁴²

Sergio Kochergin, formerly Marinecorps Scout Sniper Platoon, described that after casualties mounted it was left to soldiers on the ground to determine who was a threat. The Rules of Engagement became so relaxed that, after calling in the observation, soldiers had the authority to kill anyone they considered engaged in suspicious activity, including ‘anyone carrying a heavy bag and a shovel ... which was about 70 per cent of the Iraqi people ... who were rebuilding their country’.⁴³ Kochergin was clearly haunted by the experience and ended with an apology to the Iraqi people.

Jason Lemieux was honourably discharged as a Sergeant of the US Marine corps after three tours in Iraq; he had voluntarily extended his contract by ten months.

⁴¹ For example Hart Viges's testimony at Winter Soldier 2008 <http://www.ivaw.org/blog/rules-engagement/hart-viges>

⁴² Jason Hurd, *Winter Soldier 2008* <http://www.ivaw.org/blog/rules-engagement/jason-hurd>

⁴³ Sergio Kochergin, *Winter Soldier 2008* <http://www.ivaw.org/blog/rules-engagement/sergio-kochergin>

He talked about a similar relaxation of the Rules of Engagement which for his unit eventually meant ‘everyone on the street was considered an enemy combatant who could be killed’.⁴⁴ Others reported that they were told to take shovels and firearms to plant on Iraqis they had killed unlawfully.⁴⁵ The latter was not identified as part of the Rules of Engagement, but the other changes meant soldiers were expected to execute technically legal orders which resulted in ethically highly problematic consequences or moral dilemmas (for example whether to follow their conscience and break the Rules of Engagement or adhere to them and act in contravention of their conscience). The question is, were they prepared for such contingencies when they decided to join the military?

Volunteers and Recruitment

Skerker concedes that a citizen who is convinced, even if he or she is wrong, that the government is launching or waging an illegal war, should not enlist and links this argument to the wider principle of not doing anything one considers morally wrong. Do potential recruits, who are civilians, understand they forfeit this right with enlistment? Are they enabled to make an informed and truly free, positive choice to join the military, rather than seeking to escape from a situation in which they perceive few options for their future, which might be considered a negative choice?

Even or especially if candidates have not reflected on their rights as civilians, perhaps because they are very young when approached by recruiters, they may take them for granted and not appreciate what the limitations mean in practice. Military life is still alien to them and their motivations for making a negative choice may

⁴⁴ Jason Lemieux, *Winter Soldier 2008* <http://www.ivaw.org/blog/rules-engagement/jason-lemieux>

⁴⁵ Cohn, Gilberd, *Rules of Disengagement*, p.51.

override potential concerns. There is little evidence that resisters were aware of the limitations to their moral agency they would face in the military.

Some had joined because they were fascinated with technology, such as Michael Thurman who signed up for the US Air Force while still in high school, for patriotic reasons like William Shearer at the age of 17,⁴⁶ or because they wanted to contribute to the country's defence after the terrorist attacks of 11 September 2001.⁴⁷ When former PFC Robin Long, who came from a military family, joined after the start of the Iraq War he felt 'great', he was 'finally doing something with [his] life', 'serving his country' and doing 'something to help'.⁴⁸

Yet, many had joined in order to turn their life around or were attracted by educational opportunities or financial and social benefits.⁴⁹ Former Staff Sergeant Camilo Mejia, now Chair of IVAW's Board of Directors, joined the Army at 19. He had attempted to continue his education whilst working and receiving federal student financial aid. When the latter was cut he signed up because he saw no other option to get a higher education.⁵⁰

Although all were aware in principle that the benefits were counter-balanced by costs, some understood insufficiently the practical implications of joining or being sent into a warzone. They expected to deploy, but only understood what it means to kill or lose colleagues with personal experience. It would be unreasonable to expect

⁴⁶ Whitman-Bradley, *About Face*, p.127.

⁴⁷ See for example the 'Rules of Engagement' Video Testimonies at Winter Soldier 2008

<http://www.ivaw.org/blog/rules-engagement>

⁴⁸ Whitman-Bradley, *About Face*, pp.105 & 72.

⁴⁹ See for example the cases of Benji Lewis, Ryan Johnson, Mattis Chiroux, Matt Mishler, Ghanim Khalil, Brandon Hughey in Whitman-Bradley, *About Face*.

⁵⁰ Camilo Mejia, *The Road from ar Ramadi - The Private Rebellion of Staff Sergeant Camilo Mejia - An Iraq war Memoir* (Chicago, IL: Haymarket Books, 2008), pp.15 & 24.

armed forces to prepare recruits fully for such experiences, because theory will always fall short of reality. On the same grounds it would be unreasonable to expect potential recruits to anticipate how they will respond to war. Whilst many may be untroubled, some may develop ethical objections to war or specific operations.

There is ample evidence that not all US recruiters adhered to the legal and ethical constraints that exist in principle. Making false promises, such as that recruits would not be sent to war, fraudulent behaviour in order to facilitate an individual's enlistment, bullying and other misdemeanours by recruiters attracted not only public, but also congressional attention repeatedly.⁵¹ A 2008 Government Accountability Office (GAO) report on recruiter irregularities, requested by the House of Representatives, recommended that the DOD and services enhance oversight of such irregularities.⁵²

When public concern about questionable recruitment practices mounted, even media not associated with resistance activities or counselling addressed the problem. For example, Rod Powers, Air Force First Sergeant retired and long-time writer on the US military on About.com, a New York Times affiliate, published a multi-part article entitled 'What the Recruiter Never Told You' to shed some light on recruitment practices and the enlistment process.⁵³ A 2010 GAO report found that oversight of

⁵¹ Andrew Buncombe, 'Desertion Huge Problem for US in Iraq War', *The New Zealand Herald*, 23 May 2005

http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10126890; Amy Goodman, 'Army Recruiter Suspended for Threatening High School Student with Jail Time, Sparks Bipartisan Call for Investigation',

Democracy Now! 6 August 2008

http://www.democracynow.org/2008/8/6/army_recruiter_suspended_for_threatening_high

⁵² GAO, *DOD and Services Need Better Data to Enhance Visibility over Recruiter Irregularities*, Report to Congressional Requesters, GAO-06-846 (Washington, DC: GAO, August 2006).

⁵³ Rod Powers, 'What the Recruiter Never Told You', *About.Com - US Military*, undated

<http://usmilitary.about.com/cs/joiningup/a/recruiter.htm>

irregularities had improved, but further enhancement and greater transparency were required.⁵⁴

Civilians entering into a contract are commonly advised to 'read the small print' and are expected to understand what it means in practice. Yet, recruits cannot understand the small print, if the constraints of military life are not explained as unambiguously as the opportunities.⁵⁵ Of course recruiters, who in the US personally benefit from high success rates, and recruitment material seek to make service life as appealing as possible. However, the British Army's application guidance notes state that service members may 'have to take a life in the act of protecting life', but not that soldiers may be killed in the course of operations or face situations in which they may have to make ethically difficult choices.⁵⁶

The US Enlistment Document DD Form 4/1, Oct 2007, states that their status will change from civilian to military and that military law and regulations apply to them once they have joined a service, but does not explain the practical implications, mention unlimited liability or the possible need to take life.⁵⁷ Recruits are asked to confirm that they have no personal convictions, including those of a universal

⁵⁴ GAO, *Military Recruiting: Clarified Reporting Requirements and Increased Transparency Could Strengthen Oversight over Recruiter Irregularities*, Report to the Subcommittee on Military Personnel, Committee on Armed Services, House of Representatives, GAO-10-254 (Washington, D.C.: GAO, January 2010).

⁵⁵ See for example MoD, *Graduate Soldier - Make a Real Difference* (London: MoD, 2010) http://www.army.mod.uk/documents/general/GradSoldier_LowRes.pdf ; MoD, *Are You Ready to become an Army Officer?* (London: MoD, 2008) http://www.army.mod.uk/documents/general/Officer_level_3_V_LowRes.pdf

⁵⁶ For example Her Majesty's Armed Forces, *Army Application Guidance Notes*, AFCO Form5 Army, as at 01 September 2011 http://www.army.mod.uk/documents/general/AFCO_5_Army_01_Sep_11.pdf

⁵⁷ Enlistment/Reenlistment Document Armed Forces of the United States, DD Form 4/1, October 2007 <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0004.pdf>

conscientious objector, that would prohibit them from fulfilling military duties.⁵⁸ For some who understand what this means in practice this may be true at the time of signing the contract, but change when they mature and become familiar with military life. Indeed with the provisions for universal conscientious objection the US military and legislators accept that such changes may occur.

Transparency is particularly important when recruits are under age and are expected to deploy upon reaching the age of 18. In Britain minors formally have the right to leave during prescribed periods of training, but some argue they are not necessarily enabled to exercise this right.⁵⁹ In the US resisters stated that recruiters failed to inform them of their legitimate right to leave during the Delayed Enlistment Program or falsely threatened they would face legal consequences or blacklisting.⁶⁰ Resisters did not indicate awareness that ‘erroneous enlistment (including contract violations, recruiter fraud, and even fraudulent enlistment)’⁶¹ are grounds for requesting discharge.

Individual perceptions of being ill advised or misinformed during the recruitment process and at later stages of their service is relevant to the debate on selective conscientious objection. Even if recruits understand in principle the implications of the limitations on their moral agency, in weighing the risks that this will cause them conflicts of conscience they are likely to be over-optimistic if

⁵⁸ Shubin, *The Conscientious Objector*, p.14.

⁵⁹ David Gee, *Informed Choice? - Armed Forces Recruitment Practice in the United Kingdom* (InformedChoice, 2007) <http://www.informedchoice.org.uk/informedchoice/informedchoicefull.pdf> ; official comments and corrections available on the website. For information on more current issues see the *Forces Watch* website at <http://forceswatch.net/>

⁶⁰ Rod Powers, ‘What the Recruiter Never Told You Part 3 -- Enlistment Process and Job Selection’, *About.Com - US Military*, undated http://usmilitary.about.com/cs/joiningup/a/recruiter3_5.htm

⁶¹ Cohn, Gilberd, *Rules of Disengagement*, p.154.

recruitment information emphasises the thrill of service life and economic, educational or training and career prospects. Arguably they cannot make an informed decision about signing away part of the moral agency they have as civilians. Given this, it would seem that not granting them a greater degree of moral agency in service by denying them the right to selective conscientious objection reduces their human agency twice - when they join and when they serve.

This is particularly salient when one accounts for the effects of current operations on the consciences of service members. The concept of corporate responsibility may offer legal protection, but it is a weak argument for rejecting selective conscientious objection as a right. It did little to alleviate the guilt many resisters felt as a consequence of their actions or transgressions of others.

Conflicts of Conscience on Operations

That individuals began to question their reasons for joining the military or deployment to Iraq cannot be dismissed as lack of discipline or inability to cope with the hardship of life on operations. Reports from US resisters support Ben Griffin's criticism of US tactics in Iraq and his claim that US soldiers were treating Iraqis like 'untermenschen'.⁶² They also demonstrate that this weighed heavily on the consciences of some service members.

Some had believed the Bush Administration's declared rationale for invading Iraq, but their experiences gradually led them to question the official narrative. Quite apart from a critique of the strategic rationale - the lack of the alleged linkage between 9/11 and Saddam Hussein or the inability to find Weapons of Mass Destruction - witness accounts often highlight the contradiction between the third declared reason

⁶² Rayment, 'I Didn't Join the British Army'

for the invasion, to assist and liberate the Iraqi people, and the actual treatment of the Iraqi population. For example *USA Today* reported that

‘Phil McDowell ... joined the Army in 2001, after the Sept. 11 ... and served in Iraq for a year. A few weeks after he was discharged in 2006, he was notified that he would be sent back to Iraq under the Army’s ‘stop-loss’ policy ... He rejoined his unit, but he couldn’t go back to Iraq. He came to Canada instead. It was a wrenching decision [which he] at first considered ‘an outrageous thing to do.’ But he had soured on the Iraq war: There were no weapons of mass destruction ... McDowell hated the way average Iraqis were treated by coalition forces [and] the reports of abuse of Iraqi inmates at Abu Ghraib prison by U.S. troops.’⁶³

Stop-loss, the involuntary extension of service by a maximum of 18 months with 12 months on operations,⁶⁴ was a particularly problematic practice, described as a ‘back-door draft’.⁶⁵ Many resisters, who had unsuccessfully sought legitimate ways of separating or were due for release soon and tried to conduct themselves as morally acceptably as possible until then, went AWOL after being stop-lossed.

McDowell is also not alone with his ethical objections to the treatment of Iraqis. The empathy many resisters expressed with Iraqi people illustrates exceptionally well that their moral and ethical standard went beyond purely personal beliefs. They had been raised with these standards and norms of behaviour. In Iraq they conflicted severely with orders they received or observed others following. They were incompatible with the kind of overarching ethical belief system US regulations accept in place of belief in a supreme being as one criterion for universal

⁶³ Judy Keen, ‘In Canada once more, U.S. troops fleeing a war’, *USA Today*, 28 May 2010

http://www.usatoday.com/news/world/2010-05-23-war-resisters_N.htm

⁶⁴ Charles A. Henning, *U.S. Military Stop Loss Program: Key Questions and Answers* (Washington, DC: Congressional Research Service, R40121, 10 July 2009), pp.6f.

⁶⁵ Cohn, Gilberd, *Rules of Disengagement*, p. 9.

conscientious objection status. One can also hardly doubt the sincerity, a second criterion for such status, of resisters who have been speaking out.

Resisters objected to their peers and superiors displaying profoundly racist attitudes towards the Iraqi population.⁶⁶ Such behaviour ranged from racist slurs or the use of otherwise disrespectful language to serious mistreatment of detainees and civilians, children and adults alike, indiscriminate killing, aimless shooting and desecration of Iraqi dead.⁶⁷ Former Marinecorps Rifleman Vincent Emanuele reported witnessing or participating in such incidents which, he repeatedly stressed, had not been isolated. He asked the Winter Soldier audience to empathise with Iraqis who witnessed such incidents every day.⁶⁸

Andre Shepherd became critical of US policy when he compared his experiences in Iraq with the portrayal of US military operations in the media. He felt that the Iraqi people perceived the US military presence like

the French would look at Nazi Germany or any of the people who were overrun by the Romans ...we were supposed to be the symbol of freedom and hope, so you would expect in most places you went that they would be glad to see you...I didn't want to be part of something that is the very opposite of the ideal that we were taught since we were little.⁶⁹

PFC Robin Lang, began to doubt the official narrative in basic training and objected to the abusive language with which his instructors referred to Iraqi people. As a result he was ostracised by his peers. His doubts grew when he heard accounts from soldiers

⁶⁶ See IVAW, 'Racism and War - The Dehumanisation of the Enemy', *Winter Soldier* 2008

<http://www.ivaw.org/blog/racism-and-war-dehumanization-enemy>

⁶⁷ Cohn, Gilberd, *Rules of Disengagement*, pp. 51-58; Vincent Emanuele, *Winter Soldier* 2008

<http://www.ivaw.org/blog/rules-engagement/vincent-emanuele>

⁶⁸ Emanuele, *Winter Soldier* 2008.

⁶⁹ Whitman-Bradley, *About Face*, p.39.

returning from Iraq and in the mainstream media. He became particularly 'angry' about stories of soldiers mutilating dead Iraqis or 'bragging' about or witnessing killings.⁷⁰ When he was unexpectedly ordered to deploy to Iraq he faced a dilemma: obey and 'participate in this atrocity and massive killing of the Arab people' or disobey, be disowned by his family, 'get a dishonorable discharge, and have a hard time even getting a job at McDonald's'.⁷¹ He chose to escape to Canada and was subsequently disowned by most of his family.

Others empathised with the Iraqi population by arguing that Americans who found themselves under occupation, their homes invaded in the middle of the night and deprived of the only weapon they might have had for defending their home, would have responded in the same manner as the Iraqis did - fought back. The testimony of Geoffrey Millard, former Sergeant in the Army National Guard, is instructive. After a thirteen months deployment in Iraq he became engaged in anti-war activities while off active duty in 2006. His fellow unit members did not take kindly to a photograph of him at a protest event and when he joined his new unit some of its members seriously threatened him. Fearing for his life he contacted his lawyer who advised him to file for universal conscientious objector status. He 'realized [he] wasn't a CO' when he started writing and asking himself

if I were an Iraqi, what would I do? If I was an American, and Chinese tanks were rolling down the streets, I probably would use that nine years of military experience and f[...] kill somebody. So I couldn't say war in all forms was bad, because when you're defending your home, you're not a bad person ... It's hard to ... think about because those guys are killing my buddies, but they're still defending their homes. It's a hard place for

⁷⁰ Whitman-Bradley, *About Face*, p.107.

⁷¹ Whitman-Bradley, *About Face*, p.108.

me to be right now, I don't want them to kill my friends, but I don't want my friends to take their homeland. I wasn't a conscientious objector.⁷²

Millard's conflict of conscience combines several aspects of the experiences of other war resisters: loyalty to and concern for his peers, ethical qualms about the conduct and rationale for operations in Iraq, expressed through empathy with the Iraqi people, and the conflict between seeing Iraqis as victims of, and perpetrators of threats to, US forces. He went AWOL in August 2006, but only after further reflection and engagement with accounts of Vietnam War resisters.⁷³ He had always objected to the Iraq War, but initially felt he could only attend protests and engage with VfP. He decided to leave when he 'stopped thinking like a soldier', demanding explanations for orders, because the 'president lied to me, my commanders lied to me, I got lied to every goddamn day in Iraq'.⁷⁴

Perry O'Brien, Afghanistan veteran and co-organiser of Winter Soldier 2008, summed up the effects of remaining in service despite conflicts of conscience when he stated that one purpose of the event was 'the unburdening of guilt', because

the disconnect between the [soldier's] code and what soldiers are asked to do in the war is the source of a tremendous amount of guilt that many of us carry around. Kids grow up wanting to be GI Joe and save lives. But military policy is dictating that people do terrible things... that violate their conscience, and then have the psychological burden of carrying that around, because the military says you can't talk about it.⁷⁵

Some outspoken resisters had previously tried to effect change within the military. Many stated that they sought to avoid participating in ethically problematic actions. Some, like Camilo Mejia, increasingly and persistently tried to prevent the de-

⁷² Jamail, *Will to Resist*, pp.58-9.

⁷³ Jamail, *Will to Resist*, pp.65ff.

⁷⁴ Jamail, *Will to Resist*, p.59.

⁷⁵ Cohn and Gilberd, *Rules of Disengagement*, p. 50.

humanisation of US troops and Iraqis, but were often received unfavourably.⁷⁶ The next section illustrates this further and discusses psychological effects clashes of conscience can have on service members.

Raising Objections or Soldiering On?

Some who questioned the legitimacy of the Iraq War and objected to racist attitudes and dehumanising behaviour of their peers and command felt unable to object at first, but eventually voiced their concerns within the military. Brandon Hughey observed such behaviour in basic training. He had

been taught that all human life regardless of country of origin is of equal value. Just because somebody is from Iraq or the Middle East doesn't mean that their life is worth less than an American. In Basic Training you began to notice that they sort of didn't share that way of thinking, to put it lightly.⁷⁷

At first he kept quiet to avoid becoming a target, but then raised his concerns about the legitimacy of the Iraq War with his Non Commissioned Officer. He was told to 'stop thinking so much'; when his request for discharge was declined he went AWOL to Canada. He too seems to hold sincerely an overarching set of ethical beliefs.

T.J. Buonomo, US Air Force Academy graduate and former Army Officer, discussed his critical views on the Iraq War with fellow officers and was eventually reported to his command. After an investigation he was administratively discharged, although his declared support for President Bush's impeachment could have led to a court-martial. He suspected the Army wanted to avoid a case in which he might have defended his right to free speech. He faced various conflicts of conscience. His discharge meant he could not go to Afghanistan, a war he supported, but he also felt he had done his duty to 'speak up about illegal policies and actions', when too few

⁷⁶ Mejia, *Road from ar Ramadi*.

⁷⁷ Whitman-Bradley, *About Face*, p.165-66.

others were keeping quiet, and concluded that ‘we need people who can really think for themselves and weigh the facts and make the best decision they can no matter how difficult a decision it is’.⁷⁸

There is evidence of orders being disobeyed after a unit had been severely traumatised through an exceptionally large number of fatalities and casualties. The Second Platoon, Charlie Company had taken serious losses during an eleven months deployment in Baghdad in 2007. After more losses to an Improvised Explosive Device (IED) they refused to go on another patrol, as they could no longer ‘function professionally’ and were ‘concerned that their anger could touch off a massacre of Iraqi civilians’.⁷⁹ They had been ordered to patrol an area Bravo Company had covered before its very popular Commanding Officer committed suicide in front of his unit, saying ‘he had had it’, and after it had lost four members to an IED. Charlie Company's Commander was not immediately made aware of the reasons for their action and the battalion labelled it mutiny. The Company was split up in an attempt to improve working relationships and members were punished with ineligibility for promotion or awards for two months.⁸⁰

There are echoes of My Lai. It is not recorded that they made this link, but they acted ethically by seeking to prevent a similar outcome. Although the punishment was relatively lenient, that they were punished has direct implications for the issue at hand. Like the resisters examined above, the Company demonstrated that there are service members at all levels who reflect on their actions, think independently and are epistemologically capable of exercising moral agency, responsibly and sincerely.

⁷⁸ Whitman-Bradley, *About Face*, p.148.

⁷⁹ Jamail, *Will to Resist*, p. 47.

⁸⁰ Jamail *Will to Resist*, pp.48f.

Acknowledging, rather than punishing, such dissent would afford service members human dignity and reward, and thus foster, ethical behaviour. Evidence suggests that not acknowledging this can have devastating consequences for those who judge themselves by their own ethical framework, but soldier on in an operational climate that forces them to transgress these standards.

In 'None of Us were Like This Before' Joshua Phillips explores the reasons for a soldier's death presumed, but not officially acknowledged as, suicide and attributed to his inability to overcome feelings of guilt or shame about human rights abuses he had committed in Iraq.⁸¹ Another case the US Army considers suicide (the circumstances were allegedly controversial)⁸² is that of Colonel Ted Westhusing, an ethics professor at West Point who had voluntarily deployed to Iraq in 2004. In the presumed suicide note addressed to Generals Petraeus and Fil, his immediate superior, he accused the senior command of only caring about their career and failing in their professional, legal and ethical duties.⁸³

These cases are anything but unique. In early 2012 suicides in the US Armed Forces reached a ten-year high and outstripped combat fatalities in the same period by more than 50 per cent; to a lesser degree the same occurred in 2008 and 2009.⁸⁴

⁸¹ Joshua E.S. Phillips, *None of Us Were Like This Before - American Soldiers and Torture* (London: Verso, 2010).

⁸² Robert Bryce, 'A Death Reconsidered', *Texas Observer*, 7 February 2008

<http://www.texasobserver.org/archives/item/15282-2682-a-death-reconsidered-was-col-ted-westhusings-death-in-iraq-something-more-sinister-than-suicide> Jamail cites this article, which examines whether Westhusing might have been killed because he was uncovering corrupt practices of US private contractors.

⁸³ Jamail, *Will to Resist*, p. 166.

⁸⁴ Associated Press, 'Suicides at 10-Year high in US Military', *The Guardian*, 8 June 2012

<http://www.guardian.co.uk/world/2012/jun/08/suicide-rise-us-military>

Reasons for military suicides in the US are insufficiently understood.⁸⁵ Operational tempo, length and frequency of deployments and reluctance to seek help for mental health problems ingrained in military culture are considered important contributing factors, but health professionals have only recently begun to identify ethical or moral conflicts as a source of mental health problems, that is moral injury.

In 2009 Litz et al. warned that treatments for Post-Traumatic Stress Disorder (PTSD) have failed ‘to pay sufficient attention to the impact of events with moral and ethical implications; events that provoke shame and guilt may not be assessed or targeted sufficiently’ and sufferers were often referred to religious counsellors.⁸⁶ They stressed they did not wish to pathologise moral injury. It could only be adequately understood through ‘an interdisciplinary approach (e.g. military, biological, philosophical, sociological and social psychological, legal, religious, mental health perspectives)’.⁸⁷ Long-term consequences of moral injury can be self-harming, self-handicapping and demoralisation.⁸⁸ Two researchers involved in a current study at the Brite Divinity School, Fort Worth, on moral injury in veterans explicitly linked the high suicide rates to moral injury.⁸⁹

It is not possible to estimate how many suicides might have been preventable with a right to selective conscientious objection. Even if it were a right, claimants might face as many barriers as potential universal conscientious objectors, although

⁸⁵ Bryan Maxwell, ‘Army Reports Highest Suicide Numbers in 2011’, *Iraq and Afghanistan Veterans of America*, 19 May 2011 <http://iava.org/blog/understanding-why-end-military-suicide>

⁸⁶ B.T Litz et al., ‘Moral Injury and Moral Repair in War Veterans: A Preliminary Model and Intervention Strategy’, *Clinical Psychology Review*, Vol. 29 (2009), p.696.

⁸⁷ Litz et al., ‘Moral Injury’, p.696.

⁸⁸ Litz et al., ‘Moral Injury’, p.700.

⁸⁹ Bruce Tomaso, ‘Brite Divinity School wins grant to study ‘moral injury’ among combat veterans’, *Dallas Morning News*, 17 April 2012 <http://theSCOopblog.dallasnews.com/2012/04/brite-divinity-school-wins-gra.html/>

this would be highly undesirable as Ficarotta and Zupan argue in this volume. Yet, the available evidence does support the argument that corporate responsibility and the moral equality of combatants does not necessarily enable individuals to absolve themselves of feeling guilty for or ashamed of their transgressions or failure to prevent them. This undermines one of Skerker's core arguments against a right to selective conscientious objection.

A Right to Selective Conscientious Objection in Context

The empirical evidence demonstrates that there is a need to acknowledge that service members can have or develop moral and ethical objections to the initiation or conduct of operations which cannot be easily dismissed as unwillingness to subject themselves to military discipline. Resisters' accounts showed that many reflected critically on the rationale for the operations in which they became involved, their reasons for joining, , the compatibility of the ethical framework they had acquired during their upbringing with the operational climate and ethical questions arising from their decision to separate lawfully or illegitimately.

Recurring themes revolved around questions of honesty, trust and the dehumanisation of self and other, often combined with concerns about a lack of respect for humans in life and death, a culture of racism in the military and the imposition of great moral burdens on individual service members in an extremely complex and volatile operational environment. Corporate responsibility does not absolve all service members from guilt and shame they experienced after committing, observing or failing to prevent moral or ethical transgressions, which can lead to moral injury.

The evidence does not suggest that all service members were aware of or prepared for these challenges when they signed up. Fuller disclosure of the costs as

well as benefits of joining would facilitate more conscious choices about enlistment. Recruits ought to be better aware of potential conflicts of conscience they might experience and the practical implications of the limitations on their moral agency. Otherwise their human and moral agency is reduced twice, when they enlist and when they serve. One might object that this would portray service life as much less attractive and make recruitment more difficult. That may indeed be the case, but would increase the likelihood that those who do join are better prepared for the complex operations US and British armed forces have faced in the past decade or so. It would, however, not eliminate the need for a right to selective conscientious objection.

For individuals, a right to selective conscientious objection would acknowledge their humanity and moral agency and enable them at least in principle to avoid severe psychological damage. It could, however, also be beneficial for the military as an organisation, because it could support and promote a military and command culture that reduces the moral and ethical problems identified or equips service members to cope with them. Even without such a right the military can do a lot to improve the ethical framework of operations which many resisters identified as severely deficient. Here the onus falls on leadership at all levels.

De-humanisation of self and others does not need to be accepted as an unavoidable or even necessary by-product of such operations as conducted in Iraq and Afghanistan. To the contrary,

McMaster, when Commander of the 3rd Armored Cavalry Regiment in Iraq, forbade his soldiers from using dehumanising and derogatory language when referring to Iraqis: both because such behavior is inconsistent with the shared moral values that define a

soldier's moral identity and because such behavior is potentially a verbal 'foot in the door' leading to more serious forms of abuse.⁹⁰

The evidence has shown that this approach to leadership was not always applied. It is particularly problematic when such norms are already violated in basic training where soldiers are inculcated with core military values. When they later operate under extremely relaxed Rules of Engagement, they are less enabled to avoid or prevent abuse than those acting from a strong external ethical framework. The latter are more likely to encounter ethical conflicts, if they are expected to follow or condone others' compliance with technically legal but ethically questionable orders. This is problematic because of potential individual psychological consequences for the military as an institution and the effectiveness of operations, especially if they are to be considered just wars.

With reference to the theory of cognitive dissonance, Mastroianni has observed that substantial behaviour changes can result from series of incremental norm changes, as humans seek 'cognitive consistency, to see the world as orderly and comprehensible' and adjust their behaviour and attitudes accordingly.⁹¹ Attitudinal changes can thus change behaviour and behavioural changes attitudes. The evidence has shown that this self-reinforcing cycle, sometimes supported by the Rules of Engagement, resulted in a downward spiral in units operating in Iraq. This has also been recognised by the US Army and Marine Corps, whose increased attention to research on and education in military ethics, according to Mastroianni, aim to enhance soldiers' ability to act ethically in complex combat situations. Whether the desired effect can be achieved in practice depends on active leadership because, as

⁹⁰ George R. Mastroianni, 'The Person-Situation Debate: Implications for Military Leadership and Civil-Military Relations', *Journal of Military Ethics*, 10/1 (2011), p.10.

⁹¹ Mastroianni, 'The Person-Situation Debate', p.9.

McMasters argued, 'it is combat stress that often leads to unprofessional or immoral behavior'.⁹²

Whilst Mastroianni and McMasters focused on the importance of leadership in enabling ethical behaviour, French addressed the issue of preventing de-humanisation of the self. She recounted how Medal of Honor recipient US Army Sergeant Sammy L. Davis left a class of midshipmen in no doubt that the duty of officers was not only to save their subordinates' lives, but also their humanity, because 'war is always an assault on the humanity of every individual caught up in its destructive path', an assault that 'must be resisted as much as any physical threat'.⁹³ If wider military culture supports and rewards the adoption and implementation of such norms by leaders at all levels, leadership and military culture reinforce each other positively. This cannot be probed in detail here, but Coleman's critical examination of the concepts of duty and loyalty and Olsthoorn's critique of integrity, all three widely considered core military values, point the way.

Coleman argued that soldiers will inevitably face legal orders that 'are inherently morally problematic' and confront them with a choice between the duty to follow orders and loyalty to their group or the military.⁹⁴ They can only act with integrity, that is adhere to the organisational ethos and comply with the law of armed conflict, leaders need to explain the rationale for orders and the limits of loyalty. Instead of imposing a conflict of loyalties covering up colleagues' misconduct or abuse of civilians would be seen as a test of integrity. One might add that explaining the rationale for orders would also allow leaders to reflect on and question their legal

⁹² McMasters cited in Mastroianni, 'The Person-Situation Debate', p.10.

⁹³ Shannon E. French, 'Sergeant Davis' Stern Charge: The Obligation of Officers to Preserve the Humanity of their Troops', *Journal of Military Ethics* 8/2 (2009), p.117.

⁹⁴ Stephen Coleman, 'The Problem of Duty and Loyalty', *The Journal of Military Ethics*, 8/2 (2009), p.112.

and ethical basis; a corrective when the pressures of operations increase the risk that ethical standards slip.

Olsthoorn views the usefulness of integrity as a frame of reference for decisions more critically, although his argument does not negate the importance of explaining the rationale for orders to subordinates. Integrity, Olsthoorn argued, is a vague concept, because it can be self-referential, even self-serving, and does not necessarily lead to ethically unproblematic behaviour. It is, in his view, also a much weaker base for selective conscientious objection than moral courage, justice and respect for human life, which only Canada and Israel list as a core military value.

This analysis has shown that many resisters based their objections on values of justice and respect for human life. It argued that they showed moral courage, which was sometimes accepted as a justification for granting a service member the right to separate early. It thus suggests that they would meet Olsthoorn's criteria for granting a right to selective conscientious objection, but his three core values have wider relevance.

The analysis has also shown that service members at all levels are epistemologically capable of exercising moral agency responsibly and sincerely. Acknowledging this, it has argued, could positively reinforce ethical behaviour. It could function as a bottom-up corrective for breaches of ethical standards. Together with the leadership setting clear ethical standards of behaviour from above this would support a military culture which can reduce ethically problematic orders or behaviour.

Yet, service members should have a right to selective conscientious objection, because efforts at creating a cultural and command context which raises ethical standards cannot eliminate all risks of ethical dilemmas. This is partly due to the nature of war and character of counter insurgency operations, partly because there

will be resistance within the organisation, since some will not share this ethos. Individual military personnel will thus continue to develop conscientious objections to specific wars or the conduct of specific operations.

If these objections cannot be reconciled with their continuing service it is in the interest of the military, society and individuals who are not only servants of the state but also in the care of the military to grant a right to selective conscientious objection. The military and society should prefer avoiding the risk of moral injury to either facing the negative ramifications of its long-term consequences or the costs of healing it. Finally, a right to selective conscientious objection could play a role in organisational learning. This is an extension of Goffi's argument in this volume that, from the perspective of virtue ethics, soldiers need to develop a 'critical spirit' so they can learn from their mistakes and behave more ethically. A service member becoming a selective conscientious objector would arguably demonstrate the development of such a critical spirit at an individual level. A rise in the number of applications for selective conscientious objection would be a much more instructive indicator for the ethical 'health' of the military and politico-military decision-making processes than raw desertion and AWOL figures. The latter tend to be approached as disciplinary matters, whereas the justifications for selective conscientious objection applications would identify where and how ethical problems have arisen. They would provide the military and government with key information for corrective action within the organisation and learning lessons for the conduct and initiation of operations.